STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SLATER/WEIMER, Minors.

UNPUBLISHED
March 25, 2014

No. 317132
Montcalm Circuit Court
Family Division
LC No. 12-000563-NA

Before: HOEKSTRA, P.J., and MARKEY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent appeals by right the trial court's June 21, 2013 order of disposition taking jurisdiction over her minor children on the basis of Benjamin Wilkins' plea, a nonparent adult respondent, under the "one-parent doctrine." Respondent argues that the one-parent doctrine violates her right to due process as well as her right to equal protection. We affirm.

Child protective proceedings are initiated by the filing of a petition. MCR 3.961(A). The allegations contained in the petition concern a respondent or respondents, which may include the child's parents or certain nonparent adults who have substantial and regular contact with the child. MCR 3.903(A)(20). A respondent in child protective proceedings has a right to a trial or an adjudication of the allegations contained in the petition. MCR 3.972(A); *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2002). But MCR 3.972(A), by its express language, does not entitle every respondent to a trial. Further, as relevant to this case, a respondent may enter a plea to admit to one or more of the allegations contained in the petition. MCR 3.971(A). A child does not come within the trial court's jurisdiction until an adjudication is held on the merits of the petition and the trial court finds, by a preponderance of legally admissible evidence, that one or more of the petition's allegations of abuse or neglect under MCL 712A.2(b)(1) and (2) are true. MCR 3.972(E); *In re AP*, 283 Mich App 574, 593; 770 NW2d 403 (2009).

"If the family court finds evidence of abuse and neglect proved by a preponderance of the legally admissible evidence presented at the adjudication, it then proceeds to the dispositional phase of the protective proceedings." *In re CR*, 250 Mich App at 200-201. During the dispositional phase of the proceedings, the trial court can determine whether to terminate parental rights, order review hearings, and/or may order "services, placement, and parental visitation, as necessary and beneficial for the children." *Id.* at 201; see also MCR 3.973(A).

When multiple respondents are named in the petition, the trial court is authorized to assume jurisdiction over the child or children named in the petition on the basis of one parent or respondent's plea. *In re CR*, 250 Mich App at 202-203. Known as the "one-parent doctrine,"

the trial court's authority to exercise jurisdiction on the basis of one parent's plea or trial permits the trial court to enter dispositional orders that control or affect the conduct of the other respondents. *Id.* Indeed, after the trial court establishes jurisdiction over the children, it is authorized to determine the measures that need to be taken concerning the child or *any adult*. *Id.* at 202; MCR 3.973(A). The trial court's "jurisdiction is tied to the children, making it possible, under the proper circumstances, to terminate parental rights even of a parent who, for one reason or another, has not participated in the protective proceeding." *In re CR*, 250 Mich App at 205.

In the case at bar, it is undisputed that Wilkins was a nonparent adult respondent, and that the trial court exercised jurisdiction over the children solely on the basis of Wilkins's plea. Respondent does not argue that the trial court lacked the authority just discussed. Rather, she argues that the one-parent doctrine is an unconstitutional infringement on her procedural and substantive due process, as well as her right to equal protection of the law. We disagree.

The trial court's exercise of jurisdiction under the one-parent doctrine did not violate respondent's due process rights. Whether a respondent in a child protective proceeding was afforded due process is a question of law that we review de novo. *In re CR*, 250 Mich App at 203.

"'[D]ue process is flexible and calls for such procedural protections as the particular situation demands.'" *In re Brock*, 442 Mich 101, 111; 499 NW2d 752 (1993), quoting *Matthews v Eldridge*, 424 US 319, 332, 334; 96 S Ct 893; 47 L Ed 2d 18 (1976). "Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property." *In re VanDalen*, 293 Mich App 120, 132; 809 NW2d 412 (2011)(citations and quotation marks omitted).

> Generally, three factors will be considered to determine what is required by due process:
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> > "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Governments interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." [*In re Brock*, 442 Mich at 111, quoting *Matthews*, 424 US at 335.]

As a general rule, procedural due process "requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995).

Regarding the private interest involved in this case, it is well established that parents have a liberty interest in caring for their children, and that child protective proceedings affect that interest. See *Stanley v Illinois*, 405 US 645, 651-652; 92 S Ct 1208; 31 L Ed 2d 551 (1972); *In re Brock*, 442 Mich at 109, 111. Furthermore, "[t]he procedures used in adjudicative hearings protect the parents from the risk of erroneous deprivation of this interest." *In re Brock*, 442 Mich at 111. Respondent argues that because she was denied a trial before the trial court exercised

jurisdiction over her children, she was deprived of procedural due process because her liberty interest in caring for her children was impinged without a finding that she was unfit as a parent.

Although respondent was not afforded a trial before the trial court exercised jurisdiction over her children, we find no violation of her procedural due process rights. Initially, respondent's argument misconstrues the purpose of the adjudicatory phase of child protective proceedings. The adjudicatory phase does not, as respondent contends, focus on whether parents are unfit to care for their children. Rather, "[t]he purpose of the adjudicative phase of a juvenile court hearing is to determine whether the child comes within the court's jurisdiction under the juvenile code as alleged in the petition." *In re Nunn*, 168 Mich App 203, 207; 423 NW2d 619 (1988)(citations and quotation marks omitted). Thus, the focus of the dispositional phase is on the *child*, not the parent. Indeed, the adjudicative phase of the proceedings does not involve a final declaration as to a respondent's parental rights. *In re Brock*, 442 Mich at 111-112.

Moreover, respondent cannot establish an erroneous deprivation of her liberty interest in caring for her children because before the trial court is authorized to take further action after adjudication, a respondent is entitled to receive additional procedural safeguards during the dispositional phase of the proceedings. For instance, and contrary to respondent's claims, the adjudication phase of the proceedings does not require the trial court to remove a child from the parent's home. See MCL 712A.18(1)(a), (b). And, during the dispositional phase of the proceedings, if petitioner recommends against placing the child with her parent, petitioner "shall report in writing what efforts were made to prevent removal, or to rectify conditions that caused removal, of the children from the home." MCR 3.973(E)(2). Hence, the subsequent removal of a child from her parent's home during the dispositional phase involves a finding that the parent is unfit. Further, before respondent's parental rights can be terminated, she is entitled to a number of additional procedural protections during the dispositional phase of the proceedings, such as dispositional review hearings, the implementation of a case services plan, parental visitation, and findings as to whether continued placement outside of the home is necessary to protect the children. *In re CR*, 250 Mich App at 201-202. See also MCR 3.973(F). And, a respondent is entitled to notice of all dispositional hearings, MCR 3.921(B)(1)(d), as well as an opportunity "to examine and controvert written reports" submitted to the trial court by petitioner and to "cross-examine individuals making the reports when those individuals are reasonably available," MCR 3.973(E)(3). Further still, the trial court is not to presume during this time that the parent is unfit. See *In re Mason*, 486 Mich 142, 168; 782 NW2d 747 (2010). Therefore, because respondents are given notice and an opportunity to be heard before the children are placed outside of the home or parental rights are terminated, we find that the one-parent doctrine does not violate a respondent's right to procedural due process. See *Cummings*, 210 Mich App at 253.

In reaching this conclusion, we distinguish the case at bar from *Stanley v Illinois*, in which Peter Stanley was the father of three children, but he was not married to the children's mother. *Stanley*, 405 US at 646. Upon the death of the children's mother, the state of Illinois, pursuant to then-existing state law, declared Stanley's children wards of the state without finding that Stanley was an unfit parent. *Id.* at 646-647. The state presumed that Stanley was an unfit parent simply because he was an unwed father. *Id.* at 647. The United States Supreme Court struck down such a practice on due process and equal protection grounds and held that Stanley was entitled to a hearing on his fitness as a parent before his children could be taken from him. *Id.* at 649. The case at bar is distinguishable because unlike in *Stanley*, the one-parent doctrine

does not presume that parents are unfit. Rather, the doctrine permits the trial court to exercise jurisdiction over children because petitioner established that the children were abused or neglected. Furthermore, before parents are declared unfit under the one-parent doctrine, they are, as discussed *supra*, afforded certain procedural protections during the dispositional phase of the proceedings. Thus, *Stanley* is inapposite.

We also reject respondent's substantive due process claim. "Due process contains both a procedural and a substantive component." *Grimes v Van Hook-Williams*, 302 Mich App 521, ___; 839 NW2d 237 (2013). The arbitrary deprivation of a liberty or property interest is the essence of a substantive due process violation. *In re Beck*, 287 Mich App 400, 402; 788 NW2d 697 (2010). But "[a] person claiming a deprivation of substantive due process 'must show that the action was so arbitrary (in the constitutional sense) as to shock the conscience.'" *Id.*, quoting *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 200; 761 NW2d 293 (2008).

We find respondent abandoned her substantive due process argument by failing to allege, nor explain, how the one-parent doctrine permits an arbitrary deprivation of liberty or property interests. See *Mettler Walloon*, 281 Mich App at 220 (the plaintiff's undeveloped argument without citation to authority was deemed abandoned). Moreover, we find nothing arbitrary about the trial court's exercising jurisdiction over the children when the record reveals that one of the children suffered significant physical injuries. Indeed, it is well established that the state has a legitimate interest in protecting children who have been abused or neglected. *In re VanDalen*, 293 Mich App at 132-133.

Lastly, we reject respondent's equal protection claim. Although respondent raised this issue below, she did so for the first time in her motion for reconsideration. Thus, it is not preserved for appeal. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). "We review unpreserved claims of constitutional error under a plain-error analysis." *In re VanDalen*, 293 Mich App at 135.

"Both the federal and state constitutions provide that no person will be denied the equal protection of the law." *Brinkley v Brinkley*, 277 Mich App 23, 35; 742 NW2d 629 (2007), citing US Const, Am XIV, § 1; Const 1963, art 1, § 2. "The constitutional guarantee of equal protection ensures that people similarly situated will be treated alike, but it does not guarantee that people in different circumstances will be treated the same." *Id.*

> The essence of the Equal Protection Clauses is that the government not treat persons differently on account of certain, largely innate, characteristics that do not justify disparate treatment. Conversely, the Equal Protection Clauses do not prohibit disparate treatment with respect to individuals on account of other, presumably more genuinely differentiating, characteristics. [*Crego v Coleman*, 463 Mich 248, 258; 615 NW2d 218 (2000).]

Here, respondent's interest in her relationship with her children is a fundamental liberty interest. *In re Brock*, 442 Mich at 109, 111. But we find that although respondent was not afforded a trial or enter a plea before the trial court exercised jurisdiction over her children, she was not treated differently from a parent who was afforded a trial or who entered a plea. Indeed, the purpose of adjudication is for the trial court to exercise jurisdiction over the children. The

adjudicatory phase of the proceedings does not necessarily concern a parent's fitness. Moreover, after the trial court exercises jurisdiction, a parent who, under the one-parent doctrine, was not afforded a trial, is, as discussed *supra*, nevertheless afforded procedural safeguards, such as notice and an opportunity to be heard, before the child is placed outside of the home. And, she is afforded additional safeguards before her parental rights are terminated. Thus, parents who did not receive a trial under the one-parent doctrine receive essentially the same procedures as similarly situated parents who received a trial. The equal protection clause does not require "absolute equality." *Rose v Stokely*, 258 Mich App 283, 296; 673 NW2d 413 (2003). Accordingly, respondent has not demonstrated that plain error occurred.

We affirm.

/s/ Jane E. Markey